

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JAMES CURTIS PHILLIPS,

Petitioner,

vs.

BRIAN WILLIAMS, *et al.*,

Respondents.

2:16-cv-02709-JCM-PAL

ORDER

Petitioner has submitted an application to proceed *in forma pauperis* and a habeas petition. ECF No. 1.

Under 28 U.S.C. § 1915(a)(2) and Local Rule LSR1-2, a petitioner must attach both an inmate account statement for the past six months and a properly executed financial certificate. Petitioner did not attach a financial certificate or an inmate account statement for the past six months. The application therefore is incomplete and shall be denied. Petitioner has, however, paid the filing fee (\$5.00). Thus, the Clerk shall file the petition.

The court has reviewed the proposed petition and finds that it is defective in the following respects. To begin with, petitioner has not properly verified the petition by including his signature under penalty of perjury. *See* Rule 2(c)(5), Rule Governing Habeas Corpus Cases Under Section 2254.

In addition, petitioner has drafted and organized his petition in a manner that precludes orderly adjudication of his claims. This defect arises, in part, from petitioner's failure to use this court's form petition to plead his individual claims. For example, page three of the petition should contain the

1 heading for Ground One and petitioner's factual allegations in support of that ground. Instead, pages
2 three and four of petitioner's proposed petition contain an unnecessary explication of the law applicable
3 to ineffective assistance of counsel claims, which is followed (starting on page five) by proposed
4 grounds for relief identified in the following order – "Ground Two," "Ground Three," "Ground Four,"
5 "Ground 3," then "Ground One."

6 Also, petitioner pleads multiple claims within individual grounds for relief. For example, in the
7 ground he identifies as "Ground Two," petitioner claims that his counsel was ineffective for failing to
8 subpoena documents, for failing to advise petitioner of his rights, for failing to move for an acquittal,
9 and for coercing petitioner into pleading guilty. Instead of being combined under one ground, each
10 factually-distinct claim for relief must be pleaded under a separate ground for relief.¹ Petitioner also
11 duplicates some of his claims and allegations throughout his petition.

12 Despite the foregoing, it appears that petitioner may have tenable claims for relief. Thus, the
13 petitioner shall have an opportunity file an amended petition in a more manageable form. *See Jarvis*
14 *v. Nelson*, 440 F.2d 13, 14 (9th Cir. 1971) ("[A] petition for habeas corpus should not be dismissed
15 without leave to amend unless it appears that no tenable claim for relief can be pleaded were such leave
16 granted.").

17 Petitioner is advised to closely follow the instructions provided with the court's form petition
18 for writ of habeas corpus, as well as the instructions on the form itself. In particular, petitioner should
19 note that every claim in which he contends there was a violation of his constitutional rights is a separate
20 ground for relief and must be pleaded under a separately-numbered ground in the form petition. In other
21 words, each contention petitioner believes to be sufficient for the court to grant relief is a claim/ground
22 and must be separately presented, not mixed into the discussion of another claim/ground. In addition,
23 each ground must include all the relevant facts that support it, but only those facts. Lastly, petitioner
24 is not limited in the number grounds he may include in his federal petition, but federal habeas relief is
25 not available for claims that have not been properly presented to the Nevada Supreme Court.

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28 ¹ For some of these claims, petitioner fails to provide necessary factual information. For
example, he does not identify the particular documents counsel failed to subpoena.

1 The court, therefore, instructs petitioner to consider the matter carefully and to determine all
 2 possible claims for habeas corpus relief. If petitioner knows or learns of any exhausted or unexhausted
 3 claims which are not included in the present petition, petitioner should include these additional claims
 4 in his amended petition. Petitioner's failure to inform the court of these additional claims may prevent
 5 petitioner from ever raising these claims at a later date.²

6 In addition, petitioner has filed a motion for the appointment of counsel. ECF No. 2. Pursuant
 7 to 18 U.S.C. §3006A(a)(2)(B), the district court has discretion to appoint counsel when it determines
 8 that the “interests of justice” require representation. There is no constitutional right to appointed
 9 counsel for a federal habeas corpus proceeding. *Pennsylvania v. Finley*, 481 U.S. 551, 555(1987);
 10 *Bonin v. Vasquez*, 999 F.2d 425, 428 (9th Cir. 1993). The decision to appoint counsel is generally
 11 discretionary. *Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir. 1986); *Bashor v. Risley*, 730 F.2d 1228,
 12 1234 (9th Cir. 1984). However, counsel must be appointed if the complexities of the case are such that
 13 denial of counsel would amount to a denial of due process, and where the petitioner is a person of such
 14 limited education as to be incapable of fairly presenting his claims. *See Chaney*, 801 F.2d at 1196; *see*
 15 *also Hawkins v. Bennett*, 423 F.2d 948 (8th Cir. 1970). At this point, the issues in this case are not
 16 particularly complex. It does not appear that appointment of counsel is warranted in this instance.
 17 Petitioner’s motion for the appointment of counsel is denied.

18 **IT IS THEREFORE ORDERED** that the application to proceed *in forma pauperis* (ECF No.
 19 1) is DENIED. However, because petitioner has paid the filing fee, the Clerk shall FILE the petition
 20 for writ of habeas corpus. The Clerk shall refrain from serving the respondents at this time, pending
 21 the amendment of the petition.

22 **IT IS FURTHER ORDERED** that petitioner shall have **thirty days (30) days** from the date
 23 of the entry of this order on the record within which to file with the court an amended petition which
 24 corrects the deficiencies identified in this order. In addition to correcting the problems which the court
 25 has identified, petitioner shall include in that amended petition any and all additional claims for habeas
 26 corpus relief of which petitioner is aware.

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 28 ²This order does not explicitly or implicitly hold that the petition otherwise is free of deficiencies.

IT IS FURTHER ORDERED that the Clerk shall send petitioner a noncapital Section 2254 habeas petition form, one copy of the instructions for the form, and a copy of his initial habeas petition.

DATED: January 20, 2017.

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